

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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UNPUBLISHED

April 26, 2011

In the Matter of I. T. AKERS, Minor.

No. 299194

Macomb Circuit Court

Family Division

LC No. 2008-000484-NA

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In the Matter of K. R. AKERS, Minor

No. 299617

Macomb Circuit Court

Family Division

LC No. 2010-000052-NA

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Before: BECKERING, P.J., and WHITBECK and M. J. KELLY, JJ.

PER CURIAM.

In these consolidated appeals, respondent appeals as of right the trial court's orders terminating her parental rights to the minor children. Respondent's parental rights to I.T. Akers were terminated on June 30, 2010, pursuant to MCL 712A.19b(3)(c)(i), (g), and (j).<sup>1</sup> Her parental rights to K.R. Akers were terminated on August 4, 2010, pursuant to MCL 712A.19b(3)(g) and (l). We affirm.

**I. FACTS**

On March 16, 2008, Children's Protective Services (CPS) received a complaint that Warren Police found three-year-old I.T. alone in a park while respondent was home sleeping. When the police found I.T., he was dirty and was wearing a dirty diaper. At that time, respondent's home was full of garbage, had used condoms lying on the floor, and had no food and no sheets on the bed. As a result of the complaint, respondent received Families First services and a psychological evaluation.

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<sup>1</sup> The parental rights of I.T.'s father were also terminated, but he has not appealed that decision and is not a party to this appeal.

On August 6, 2008, Warren Police found I.T. alone outside of his home wearing only shorts with his back covered in feces. The police found I.T.'s babysitter sleeping in the home. The babysitter was subsequently arrested for failing to properly update his sex offender status. The Warren Police observed respondent's home to be cluttered with trash. There were full ashtrays lying on the ground, and there was an inappropriate food supply and old food containers on the counters and stove. The beds did not have sheets on them, and one of the beds was stained with feces.

On August 7, 2008, petitioner filed a petition for the removal of I.T. from respondent's home and temporary court custody of I.T. Petitioner alleged that respondent failed to benefit from services that had been offered to her since the March 16, 2008, incident. Petitioner alleged that respondent failed to provide proper supervision or establish an appropriate daycare provider for the child.

On September 4, 2008, respondent entered a no contest plea to the allegations contained in the petition. The trial court accepted respondent's pleas and took temporary custody of I.T. Bobbi Mitchell, the foster care worker, stated the requirements of the parent/agency agreement for respondent were: (1) a psychological evaluation and follow-up with any recommendations; a referral would be offered for therapy if recommended; (2) parenting classes, as many sessions as required; (3) visitation once a week; (4) maintain a consistent, legal source of income; (5) maintain a safe and suitable home; (6) unannounced home visits to inspect respondent's home; (7) maintain a substance free lifestyle and undergo a substance abuse assessment to rule out any substance abuse issues.

Review hearings were held on March 3, June 2, and November 18, 2009, and permanency planning hearings were held on August 25, 2009, and January 19, 2010. On January 19, 2010, the trial court authorized, and petitioner filed, a petition for termination of respondent's parental rights to I.T. Petitioner requested termination pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). Petitioner also filed a petition for the termination of respondent's parental rights to her newborn child, K.R. Akers. Petitioner alleged that K.R. was born on January 16, 2010, and that respondent refused to give petitioner any information regarding K.R.'s legal father. Petitioner alleged that respondent was not in compliance with her parent/agency agreement in I.T.'s case. Petitioner also alleged that respondent was currently being evicted from her apartment in Roseville because she did not pay the rent and failed to provide an alternate plan for housing. Petitioner requested that the trial court terminate respondent's parental rights to K.R. pursuant to MCL 712A.19b(3)(a)(i), (c)(i), (g), (i), and (j).

Termination hearings were held on March 11, April 29, June 17, June 30, and August 4, 2010. At the hearings, Elizabeth Stewart, a visitation coach with Judson Center, Cynthia Parsons, the foster care worker assigned to the case from January 2009 to September 2009, and Shauna Aldred, the foster care worker assigned to the case from February 2010 to June 2010, testified.

As a result of respondent's psychological evaluation in April 2008, Dr. Patrick Ryan recommended counseling because he concluded that respondent was self-defeating, codependent, and relied on the wrong people. Ryan also recommended parenting classes. Parsons referred respondent to counseling, which respondent completed. Respondent also completed parenting classes. After completion of the parenting classes, Parsons assigned respondent a parent coach

because she felt that respondent still had issues with her parenting skills. Specifically, Parsons was concerned that respondent acted as a visitor in I.T.'s life, not a parent, and that she had not demonstrated that she wanted to parent I.T. as a full-time parent.

During the first year of the proceedings respondent was employed at Taco Bell working 20 to 40 hours a week. Parsons testified at the termination hearing that respondent had been fired from Taco Bell because of her felony conviction, and petitioner had not received any documentation of respondent's employment after the November 18, 2009, hearing. Parsons also testified that respondent had reported that she had a job at ON Star, but respondent had not provided any documentation of that employment. Parsons explained to respondent many times the necessity of providing her employment documentation.

In July 2009, petitioner provided respondent with a security deposit and her first month's rent of \$500. Parsons helped respondent set up a budget. She stated that the budget was very tight, but that respondent could pay her rent and bills on her income if she were careful. Soon after respondent moved in to her apartment, Parsons noted that respondent had purchased a laptop for herself. By October or November 2009, respondent had spent a few days at her mother's place because respondent's electricity had been shut off. At the termination hearing, respondent was \$850 behind in her rent and her landlord had started eviction proceedings against her.

Respondent had a new boyfriend, Nathaniel Johnson, who had several prior felony convictions for carjacking, possession of dangerous weapons, and armed robbery. Respondent tried to conceal her relationship with Johnson. I.T. told Parsons that he thought it was funny that, during a parent coaching visit at respondent's home, "Nate" was hiding in the bedroom. During an unscheduled visit on March 9, 2010, Parsons observed men's boots and clothing in respondent's bedroom. Respondent explained that a friend was staying with her. Respondent was aware of Johnson's felony convictions because she had expressed concern that Taco Bell would find out about them and that Johnson would be fired.

On June 30, 2010, the trial court found that clear and convincing evidence supported the statutory bases for termination of respondent's parental rights to I.T. The trial court concluded that, although respondent had been given every opportunity to demonstrate that she was able to provide a suitable and stable home for the child, she was not able to do so and would be unable to do so in a reasonable time. The trial court noted that the conditions that brought I.T. into care were completely rectifiable. However, respondent chose to put her needs before her child's needs. The trial court further found that termination was in I.T.'s best interests. Considering respondent's current circumstances, the trial court stated that there was no way that I.T. could be returned home in the foreseeable future.

On August 4, 2010, the trial court considered termination of respondent's parental rights to K.R. pursuant to MCL 712A.19b(3)(g) and (l). Respondent admitted that her parental rights to I.T. had been terminated on June 30, 2010. Respondent pleaded no contest to the allegation contained in the petition that her parental rights should be terminated pursuant to MCL 712A.19b(3)(l). Respondent also pleaded no contest to the allegation contained in the petition that she failed to provide proper care and custody for K.R. The trial court took judicial notice of the file and terminated respondent's parental rights pursuant to MCL 712A.19b(3)(g) and (l).

Respondent also stipulated that termination was in K.R.'s best interests. The trial court took judicial notice of the file and concluded that termination was in the child's best interests.

## II. STATUTORY GROUNDS FOR TERMINATION

### A. STANDARD OF REVIEW

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). This Court reviews the trial court's findings of fact under the clearly erroneous standard. MCR 3.977(K); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). "'A finding is 'clearly erroneous' [if] although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.'" *In re Miller*, 433 Mich at 337 (quotation omitted). Regard is given to the "special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *Id.*

### B. ANALYSIS

Respondent's parental rights were terminated under MCL 712A.19b(3)(c)(i), (g), (j), and (l), which provide:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

\* \* \*

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

\* \* \*

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

\* \* \*

(l) The parent's rights to another child were terminated as a result of proceedings under section [MCL 712A.2] or a similar law of another state.

MCL 712A.19b(3)(c)(i)

The conditions that led to adjudication were respondent's failure to provide proper supervision for I.T. and failure to provide a safe and secure environment for him. The Warren police found I.T. alone and dirty outside while respondent, or an inappropriate caretaker, was sleeping in respondent's home. In addition, respondent's home was dirty, cluttered with garbage, and lacked an adequate food supply.

These conditions, lack of supervision and an unstable living environment, continued to exist at the termination hearing. Although respondent completed parenting classes, Parsons referred her to a parent coaching program at the Judson Center because respondent still had issues with her parenting skills. Parsons felt that respondent acted as a visitor in I.T.'s life, not his mother. Parsons and Stewart testified that they had to repeatedly direct respondent to pay attention to and spend time with I.T. Stewart reported that, during the parent coaching visits, respondent wanted to spend the visit talking with Stewart, and Stewart had to encourage respondent to engage with I.T. During the visits with I.T., respondent watched television and fell asleep.

Parsons testified that after parent coaching began, I.T. was allowed to stay with respondent alone in her apartment for a short period of time. Parsons testified that during a visit with I.T. at his grandmother's home, I.T. climbed up on the counter to get into a cupboard. His grandmother told him that he knew better than to climb on the counter. I.T. replied that he did that at respondent's home because he had to make his own lunch when respondent was sleeping. Respondent sleeping and leaving I.T. unsupervised was the exact situation that led to adjudication.

Respondent's unstable home environment also continued to exist. At the time of the termination hearing, respondent was facing eviction because she failed to pay the rent. Parsons had helped respondent work out a budget and told respondent that it would be tight but that she could live within her means if she were careful. However, when respondent moved into the new apartment on July 1, she had purchased a new laptop computer. Parsons was concerned because she knew that the computer did not fit into respondent's budget. In September or October 2009, respondent had stayed with her mother for a few days because her electricity had been turned off. That was only three or four months after respondent had moved into her apartment.

There was no reasonable expectation that respondent would be able to rectify the conditions that led to adjudication in a reasonable time considering the child's age. At the time of the termination hearing, respondent had not presented any documentation of employment since November 2009. Parsons had explained to respondent many times how important it was to provide documentation of her income. In addition, respondent was being evicted from her apartment and had not presented any plans for future housing. Respondent was also in a relationship with someone who had been convicted of several felonies, including carjacking and armed robbery. Respondent allowed this person to be in her home while she was visiting with I.T. and tried to hide the relationship from Parsons and from her parent coach.

Considering this evidence, the trial court did not clearly err in concluding that clear and convincing evidence supported termination of respondent's parental rights to I.T. pursuant to

MCL 712A.19b(3)(c)(i). There was no reasonable expectation that respondent would be able to rectify the conditions that led to adjudication in a reasonable time considering the child's age.

MCL 712A.19b(3)(g)

There was clear and convincing evidence that respondent failed to provide proper care and custody for her children and there was no reasonable expectation that respondent would be able to provide proper care and custody for them within a reasonable time considering the children's ages.

As discussed above, I.T. was removed from respondent's care because she failed to provide proper care and custody for him. I.T. had been found wandering outside of his home while respondent or an inappropriate caretaker was sleeping. K.R. was removed from respondent's care at birth because respondent was being evicted from her home and was not in compliance with the parent/agency agreement in I.T.'s case. Although respondent attended parenting classes, counseling and worked individually with a parenting coach, there was no reasonable expectation that respondent would be able to provide proper care and custody for the children within a reasonable time.

Parsons testified that she felt that respondent acted like and was content to be a visitor in I.T.'s life rather than a parent. Respondent had visitation with I.T. on Saturdays at her mother's home. Respondent was in compliance with this visitation, but during many of the visits, respondent wanted to spend time talking to her mother instead of spending it with I.T. Because respondent's mother was willing, the trial court ordered more liberal visitation and respondent was allowed to visit almost any time she wanted as long as her mother was available. However, respondent never took advantage of this liberal visitation and continued to only visit I.T. on Saturday. Respondent never visited I.T.'s school and never asked about him or called him during the week. Parsons was concerned because respondent never expressed any desire or need to fully participate in I.T.'s life.

During this time, respondent became pregnant with K.R. and entered into a relationship with Johnson, who was not K.R.'s father. Johnson had a criminal history and respondent tried to hide that relationship from Parsons and her parent coach. I.T. was aware that respondent tried to hide the relationship.

Also, as discussed above, respondent did not have housing or a documented income. Although K.R. was removed from respondent's care at birth, evidence of respondent's treatment of I.T. was probative of the way she would treat K.R. *In re AH*, 245 Mich App 77, 84-85; 627 NW2d 33 (2001), lv den 465 Mich 862 (2001). Based on this evidence, the trial court did not clearly err in terminating respondent's parental rights to both children pursuant to MCL 712A.19b(3)(g).

MCL 712A.19b(3)(j)

There was also a reasonable likelihood, based on respondent's conduct and capacity, that I.T. would be harmed if placed in her care and custody. First, respondent no longer had a home to which her son could be returned. Moreover, respondent failed to offer any plan for future housing for the child. Respondent engaged in relationships with men that were potentially

harmful for her children. There was evidence that I.T. was left on his own and unsupervised, climbed onto counters to feed himself, and even wandered out of the house while respondent slept. Additionally, during a parent coaching visit, respondent had a window open in her second-story flat because she was smoking. The window did not have a screen on it. The parent coach explained to respondent that a wide open window on the second story was not safe for small children. Respondent argues that because this was a one-time incident and the child was unharmed, it did not constitute clear and convincing evidence that the child would be harmed if returned to her care. However, this incident exemplifies respondent's failure to adequately supervise and provide proper care and custody for the child and how that lack of supervision and proper care presented a reasonable likelihood of harm to him. Considering that respondent had to be consistently prodded and reminded to pay adequate attention to her son during two-hour visitations, there is no basis on which to conclude that she would adequately supervise him when she was alone with him on a full-time basis. The trial court did not clearly err in terminating respondent's parental rights to her son pursuant to MCL 712A.19b(3)(j).

#### MCL 712A.19b(3)(l)

During the termination hearing regarding K.R., respondent admitted that her parental rights to her son had been terminated approximately two months earlier, and she pleaded no contest to the allegation that her parental rights to K.R. should be terminated pursuant to MCL 712A.19b(3)(l). On appeal, respondent does not challenge the trial court's holding regarding this statutory ground. Accordingly, we affirm the trial court's order terminating respondent's parental rights to K.R. pursuant to MCL 712A.19b(3)(l).

### III. BEST INTERESTS

#### A. STANDARD OF REVIEW

Once the petitioner has established by clear and convincing evidence a statutory ground for termination, the court must terminate if it finds that termination of parental rights is in the child's best interests. MCL 712A.19b(5). The trial court's decision regarding the child's best interests is reviewed for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

#### B. ANALYSIS

On appeal, respondent argues that the trial court erred in terminating her parental rights to I.T. because they had a strong bond. Parsons repeatedly testified that I.T. was strongly attached to respondent, but that respondent did not reciprocate that attachment. During visitation, respondent wanted to visit with her parents or the parenting coach, rather than I.T. The workers had to persistently remind respondent to interact and engage with I.T. Parsons testified that, when she went with respondent to visit the new apartment, I.T. was very excited that respondent was getting her own place and kept trying to get respondent's attention. However, respondent just kept pushing I.T. away.

In addition, the trial court allowed respondent very liberal visitation in that respondent could visit I.T. at her parent's house any time she wanted. However, respondent never took advantage of this opportunity and only visited I.T. on Saturday. Respondent never called I.T. during the week or visited his school.

K.R. had been placed with respondent's sister. Respondent's sister called respondent to tell her that she was coming into town with K.R. and asked respondent if she wanted to meet with them so that she could see K.R. Respondent declined the visit because she had a date. Parsons did not believe that more parenting classes or parenting coaches would instill in respondent a desire to parent her children.

In addition to respondent's lack of attachment to her children, she did not have housing, she did not provide income documentation, and she allowed inappropriate men into her and her children's lives. The trial court did not clearly err in concluding that terminating respondent's parental rights was in both children's best interests.

Affirmed.

/s/ Jane M. Beckering  
/s/ William C. Whitbeck  
/s/ Michael J. Kelly